

Federal Definitions	OHFLAC	APS	Ombudsman
Reasonable Suspicion of a Crime			
Per the Affordable Care Act, a “covered individual” of a LTC facility (owner, operator, employee, manager, agent, or contractor) must report to the State survey agency AND at least one local law enforcement entity “any reasonable suspicion of a crime” as defined by local law, committed against an individual who is a resident of, or is receiving care from, the facility. If events that cause the reasonable suspicion result in serious bodily injury*, the report must be made immediately but no later than 2 hours after forming the suspicion. Otherwise, the report must be made no later than 24 hours after forming the suspicion.	Yes	No	Yes
* Serious Bodily Injury – An injury involving extreme physical pain; involving substantial risk of death; involving protracted loss or impairment of the function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. In the case of “criminal sexual abuse” which is defined as serious bodily injury, harm shall be considered to have occurred if the conduct causing the injury is relating to aggravated sexual abuse or sexual abuse.			
Injury of Unknown Source			
CMS letter S&C-05-09 (12/16/04) – An injury should be classified as an “injury of unknown source” when BOTH of the following conditions are met: 1. The source of the injury was not observed by any person or the source of the injury could not be explained by the resident; and, 2. The injury is suspicious because of the extent of the injury or the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma) or the number of injuries observed at one particular point in time or the incidence of injuries over time.	Yes	Yes	Yes
Misappropriation of Resident Property			
42 CFR 488.301 – Deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident’s personal belongings or money without the resident’s consent. This does include diversion of medications; however, this does not include “missing items” where there is no allegation of theft.	Yes	(1)	Yes
Neglect			
42 CFR 488.301 – Failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. (NOTE: This is regardless of whether the perpetrator actually “meant” or “intended” to cause harm.)			
Alleged Perpetrator is an employee, staff or independent health contractor used by the facility other than a nurse aide or the identity of the alleged perpetrator is unknown.	Yes	Yes	Yes
Alleged Perpetrator is a nurse aide whose identity is known	(4)	Yes	Yes
Abuse			
42 CFR 488.301 – Willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. (This includes verbal, physical, sexual, and psychosocial / emotional abuse, corporal punishment, and involuntary seclusion.)			
Resident-to-Resident. No sexual abuse occurred and no physician intervention was required.	No	No, unless due to lack of staff or encouraged by staff	Yes
Resident-to-Resident. Sexual abuse occurred or physician intervention was required.	Yes		(2)
Alleged Perpetrator is an employee, staff or independent health contractor used by the facility other than a nurse aide or the identity of the alleged perpetrator is unknown.	Yes	Yes	Yes
Alleged Perpetrator is a nurse aide whose identity is known	(4)	Yes	Yes
Alleged Perpetrator is a visitor or family member. No physician intervention was required.	No	Yes	Yes
Alleged Perpetrator is a Visitor or Family Member. Physician intervention was required.	Yes	Yes	Yes
Unusual Occurrence			
Reporting of “unusual occurrences” (events that do not meet the definitions of abuse, neglect, and/or misappropriation of resident property) is voluntary. There is no statutory requirement for this reporting.	Yes	No	Yes

At times, an event may not be perceived by staff to constitute resident abuse, neglect or misappropriation of resident property; however, if a resident, family member or visitor perceives an event to be abuse, neglect or misappropriation the facility must report the event.

APS (1)	<p>WV Code 9-6-1 defines abuse and neglect as follows.</p> <p>Abuse: The infliction or threat to inflict physical pain or injury on or the imprisonment of any incapacitated adult or facility resident. (Similar definition is contained in §61-2-29 that addresses penalties for abuse or neglect of incapacitated adult or elder person)</p> <p>Neglect: (A) The unreasonable failure by a caregiver to provide the care necessary to assure the physical safety or health of an incapacitated adult; or (B) The unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an incapacitated adult or resident;</p> <p>Any event being reported to APS must be reported immediately to the local office. If the immediate report must be made when the local APS office is closed, call the APS Hotline at 1-800-352-6513. The 7-part APS reporting form should be received by APS within 48 hours of the event. Submission of the reporting form within 48 hours does NOT relieve the facility of the responsibility to complete the immediate reporting. All nursing home staff is a mandated reporter per WV Code 9-6-9.</p> <p>Misappropriation of resident property that constitutes active financial exploitation of the resident MUST be reported to APS. Other forms of misappropriation of resident property are NOT reported to APS.</p>
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Ombudsman (2)	The Ombudsman Program would like the facility to inform them of any situation for which they may provide assistance, even if it is not reportable to another agency.
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Others (3)	Local Law Enforcement Agency	Reasonable suspicion of a crime against a resident.
	Licensing Board of a Licensed Professional	Allegations of abuse, neglect, and/or misappropriation, where the alleged perpetrator is a licensed professional, should be reported to that individual's professional licensing board.
	Medical Examiner or County Coroner	When there is probable cause to believe that an incapacitated adult or facility resident has died as a result of abuse or neglect, mandatory reporters (see W. Va. Code 9-6-9) must immediately report these cases to the Medical Examiner (or the County Coroner where there is no Medical Examiner).
	Medicaid Fraud Control Unit (MFCU)	Although the MFCU is required to investigate certain allegations of resident abuse / neglect, the facility does not need to report them directly to this unit. Other State agencies to which the facility reports will notify the MFCU of those cases that appear to warrant criminal investigations and prosecution.
	Drug Enforcement Agency (DEA)	When a drug diversion is identified, the nursing home's consultant pharmacist will report the diversion to the DEA.

OHFLAC Nurse Aide Program (4)	<p>Allegations of resident abuse, neglect, and misappropriation of resident property, where the alleged perpetrator is a nurse aide whose identity is known, are to be immediately reported to OHFLAC's Nurse Aide Program and not to OHFLAC's Nursing Home Program.</p> <p>If the alleged perpetrator is suspected to be a nurse aide, but the identity of this individual is unknown, this allegation is to be reported to OHFLAC's Nursing Home Program</p>
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